IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION. 988 OF 2002

IN

SECOND APPEAL NO. 625 OF 2002

Dhondiba Chandru Gadade .... Applicant

Vs.

Gangubai Tatoba Gadade & Ors. .... Respondents

Mr. Sandeep Kurne for Applicant.
Mr. S.S. Patwardhan for Respondent Nos. 1,2 & 5

CORAM : A.S. OKA, J.
DATE : 7TH DECEMBER, 2007

P.C.

1) Heard learned Advocates appearing for the Applicant and Respondent Nos. 1,2, and 5. Office noting shows that Affidavit of service has been filed for rest of the Respondents.

2) In this application, ad-interim relief was granted on 11th September 2002. Shri Patwardhan learned Advocate appearing for contesting Respondents invited my attention on the order dated 3rd April 2003 passed by this Court in this Civil Application on the date on which the Second Appeal was admitted. The said order reads thus :

"No interim orders. Partition Proceedings to be completed. Liberty to apply".

. He submitted that the said order is very clear. The said order amounts to rejection of prayer for interim relief. He pointed out that the direction issued is to complete the partition proceedings. He submitted that liberty referred to in the said order is a liberty to apply for fixing a date for final hearing. He, therefore, submitted that the present application does not survive as the prayer for interim relief made in this application has been rejected by this Court by the aforesaid order by stating that no case was made out for grant of interim relief.

3) The said submission cannot be accepted for more than one reason. On 31st August 2006, Civil Application came up before this Court. After hearing the Advocates appearing for both the parties, the Civil Application was adjourned to 4th September 2006. Further order dated 8th September 2006 on this application reads thus :

> "Heard learned Counsel appearing for the parties.
>
> 2. Notice to respondent nos. 3, 4 and 6 returnable within three weeks. Humdast granted.
>
> 3. Decree for partition, in relation to the agricultural land, is passed by the trial Court and confirmed by the first appellate court. Authority concerned to

proceed with the partition proceedings. However, the Authority shall not deliver actual physical possession of the suit property to the original plaintiff till the next date."

4) There is a further order passed on 22nd November 2006 by which service was directed to be effected on the unserved Respondents. The Order dated 22nd December 2006 has a result of extending the order dated 8th September 2006 till further orders. The order dated 8th September 2006 has been passed after hearing both the parties because this Court came to the conclusion that the Civil Application was very much pending. Perusal of the orders dated 3rd April 2003 and 8th September 2006 show that both the orders are not inconsistent. The direction contained in order dated 3rd April 2003 cannot be construed to mean that this Court permitted actual partition to be effected by metes and bounds. The Second Appeal challenging a decree for partition has been admitted for final hearing. The said order dated 3rd April 2003 indicates that at that stage the Court was not inclined to grant interim order. The liberty granted by the said order can be obviously invoked at the stage when final order is passed in partition proceedings and a question of executing that final order by making a partition by metes and bounds arises. The order dated 8th September 2006, permits partition

proceeding to go on and prohibits only the implementation of the said order by effecting partition by metes and bounds.

5) As Second Appeal has been admitted, the Civil Application deserves to be disposed of in terms of order dated 8th September 2006 and the same is accordingly disposed of.

6) The hearing of the appeal is expedited.

(A.S. OKA, J.)